

PROOF in Procefs,

Royal Bank,

Against

Dunlop, Houstoun, Gammill, & Company.

John Anderfon, W. S. }
James Giblon, W. S. } Agents.

M. Clerk.

1245. h
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P R O O F

IN PROCESS,

THE ROYAL BANK OF SCOTLAND,

AGAINST

Mess. DUNLOP, HOUSTOUN, GAMMILL, & COMPANY.

P U R S U E R S P R O O F.

At Glasgow, the 6th day of February 1795,—In presence of
Robert Græme, Esq; Sheriff-substitute of Lanarkshire,
Commissioner,

APPPEARED JOHN DUNLOP, Esq; merchant in Glasgow, A
aged 30 years and upwards, married, being solemnly
sworn and examined, purged of malice and partial coun-
fel, and required to exhibit all accounts and writings relative to
the transactions between the defender James Dunlop, and the
other defenders, Mess. Dunlop, Houstoun, Gammill, and Compa-
ny,

A ny, or any of the individual partners of that Company, from the 1st of January 1792, down to the 21st of March 1793, the period of Mr Dunlop's failure.—Observed for the defenders, That this question does not appear to fall either within the pursuers condescendence, or the interlocutor of the Court; and there-
B fore they object to the question in its present general terms, though they will willingly give inspection to the pursuers of the books or accounts of the Greenock Bank, in so far as they relate to transactions between Mr James Dunlop and the Company, from the 1st of January 1792 till March 1793 inclusive.—An-
C swered for the pursuers, That the object of the defenders, in wishing to exclude any light that can be thrown upon the transactions in question, cannot easily be discovered; but, at any rate, the exhibition now required falls most evidently within the fourth article of the pursuers condescendence, and the interlocutor of
D the Court, granting diligence against havers, for recovering all writings condescended on, or referred to; and what is now offered in the objection by the defenders, is nothing else than the inspection, which, by the interlocutor, they are appointed to give to Mr David Murray.—Replied, That, by the very words of
E the fourth article of the pursuers condescendence, 'an examination of Mr Dunlop's accounts with the Company' is all that is required on the part of the pursuers to establish the facts mentioned in that article, which is very different from the exhibition now required; and the inspection allowed to Mr Murray is of a
F confidential and limited nature, the principles of which cannot be applied to an ordinary witness examined as a haver; but to show that the defenders have no intention to withhold any necessary writings, they offer to allow the pursuers to get excerpts from any particular writings which they may condescend upon,
G in so far as they relate to this cause, and fall within the condescendence and interlocutor, and which may be in the custody of the witness; and they have no objection, that the exhibition which is appointed by the Court to be made to Mr David Murray, shall be extended to the writings now required from the wit-
H ness, under the restrictions specified in the interlocutor of the 14th of January last.—Duplied, That the object of the exhibition is to shew, from any documents in the possession of the witness, the nature and extent of James Dunlop's transactions with and on behalf of the Greenock Banking Company, and the pursuers

purfuers fhall certainly be fatifified with any excerpts taken from A
 thefe, at the fight, or by the direction of the commissioner, that
 may tend to exhibit thefe tranfactions in the fituation in which
 they really flood.

The commissioner having confidered the queftion and debate,
 with the condefcendence and interlocutor of the Court referred B
 to, finds the witnefs bound to exhibit the whole papers of Mr Dun-
 lop in his-cuftody, relative to the queftion at iffue, to the inſpec-
 tion of the agents for the parties, fo as excerpts may be taken there-
 from, to be authenticated to the Court.

And the ſaid John Dunlop being examined, depones, That C
 about a month ago a cheft, containing fundry papers, was
 brought from the defender Mr Dunlop's houſe to the deponent's
 houſe, and lodged with him, as trustee upon Mr Dunlop's ſe-
 queſtrated eſtate; which papers he now exhibits, for the inſpec-
 tion of the agents for the parties, to the end that excerpts may D
 be taken therefrom. And having looked through the papers in
 his poſſeſſion, he produces twenty-five letters from the Greenock
 Banking Company to the defender Mr Dunlop, together with
 forty-three receipts of the branch of the Royal Bank of Scotland
 at Glaſgow, for money placed to the credit of Mr Dunlop's caſh- E
 account with the ſaid Bank; which appear to be all the papers
 in his poſſeſſion that can have any connection with the queſtion
 under debate, from the 1ſt of January 1792 till the month of
 March 1793, incluſive. He alſo exhibits two books, the one a
 letter-book, and the other an account-book, which appear to be F
 the only books that can eſtabliſh any of the matters enquired af-
 ter: That he has not any other papers or vouchers in his hands,
 relative to the ſubject in debate, for the period above mention-
 ed, to his knowledge; nor does he know, or ſuſpect, where any
 of them may be, except thoſe in the hands of Mr Gilbert Ha- G
 milton, aſſiſtant trustee to the deponent in the management of Mr
 Dunlop's eſtate under ſequeſtration; and he has not fraudfully
 put out of his poſſeſſion any ſuch books, papers, or vouchers.
 And the above is truth, as he ſhall anſwer to God.

Minute for the Defenders.

- A The defenders desire, that it may appear upon the face of this report, that before the commissioner pronounced the interlocutor, ordaining Mr Dunlop to be examined, and before his examination, they offered to submit the exhibitions made by Mr Dunlop to the inspection of neutral persons, that they might report what
- B of these productions applied to the matters at issue, upon the same principles that Mr David Murray is appointed to report upon the exhibitions made by him; and that the pursuers declined to accept of the offer, which the defenders cannot help thinking they did with a bad grace, considering the strenuous
- C opposition which they made to the exhibition required by the defenders.—The agent for the pursuers answered, That he was at a loss to understand what was meant by the allegation, that they had strenuously opposed the productions required by the defenders; for, so far as he knew, the pursuers were always most
- D ready to join issue in the most full and fair investigation of every fact and circumstance regarding the transactions in question: That the books and papers now exhibited had been in the hands of the trustee on Mr Dunlop's sequestrated estate, and of course open to the inspection of the numerous creditors of Mr Dunlop,
- E and indeed may be said to be already *in manibus curiæ*, in consequence of Mr Dunlop's sequestration. It did not, therefore, seem easy to assign any good reason why they should not be sent as they stand to the process, with the report of the act and commission, as they certainly contain a variety of accounts and communications material to the issue; and to make excerpts of what
- F appears to be material, would be to make copies of all, or by much the greater part of these productions; and the time allowed for reporting would scarcely be sufficient to accomplish this: unless, therefore, some strong reason to the contrary is pointed
- G out by the defenders, (for the trustee on Mr Dunlop's estate made no objection to it), it is submitted, that these productions should be transmitted as part of the report, or at least that they should be transmitted to the process under seal, and undergo the inspection of Mr Murray, along with the other writings, and for the purpose mentioned in the interlocutor of the Court.

Court.—Replied for the defenders, That since the books and A
papers were exhibited by Mr Dunlop, the pursuers and their a-
gent have occupied upwards of an hour in examining them; and
without they shall condescend upon strong reasons for insisting
that the exhibits shall be transmitted to the process along with the
report of the commission, the defenders must be forgiven for op- B
posing the demand of the pursuers. The interlocutor of the com-
missioner allowed the examination or inspection of exhibits to be
taken at the sight of parties; but if the exhibits are removed to
Edinburgh, the defenders will be deprived of that easy and ready
access to them which they possess at present, and which, with sub- C
mission, they are intitled to; and, independent of that circum-
stance, the pursuers, in their answer, take a fact for granted,
which is by no means ascertained, namely, that the trustee on Mr
Dunlop's estate has no objection; for the trustee's consent was ne-
ver asked; and besides, the Cash-book, which has been exhibited, D
appears to contain transactions for two years prior to January
1792, with which certainly the pursuers have no concern; so that
it would be extremely improper and indelicate to third parties to al-
low these transactions to fall under general examination: For these
reasons, it is presumed the commissioner will refuse the request E
made by the pursuers in their answer, and direct the pursuers
and their agent to finish that inspection and examination of the
exhibits, upon which they have already been so much occupied.
At the same time, the defenders must take the liberty of remark-
ing, that when, in the debate preliminary to the deposition of Mr F
Dunlop, they stated, ' that they had no objection that the exhi-
' bition which was appointed by the Court to be made to Mr Mur-
' ray, should be extended to the writings required from Mr Dun-
' lop, under the restrictions specified in the interlocutor of the 14th
' of January,' the books which he afterwards exhibited had not G
then been opened, so that the defenders were in the dark as to the
extent of the accounts and transactions in these books, particularly
in the Cash-book. But now that they have seen these books, and
discover from them that they contain transactions from January
1790, of high importance to third parties, they must qualify their H
former consent, in such a manner as that the transactions in the
Cash-book, prior to January 1792, must, from respect to these
third parties, be kept separate and distinct from the rest; and
therefore, upon the commissioner's closing up those parts of the Cash-
book which contain the transactions prior to January 1792, the
B defenders

A defenders can have no objection that the residue of the book, together with the other exhibits, shall be transmitted under seal to Mr Murray, for the purposes, and under the conditions specified in the before-mentioned interlocutor. The commissioner having considered the foregoing minute, answers, and replies ; in respect
 B of the consent of parties, appoints the exhibits to be transmitted to Mr David Murray, mentioned in the debate, for the purpose of examining them, and reporting to the Court whatever may appear to him, from inspection thereof, to be any wise material to the cause, or tending to throw light upon the points in dispute
 C between the parties, under the limitations and restrictions specified in the interlocutor of the Court of the 14th of January last ; but previous thereto, appoints the transactions contained in one of the books exhibited, titled, ' Debtors, Dunlop, Houstoun, Gam-
 ' mill, and Company, in account with James Dunlop, Creditor,'
 D previous to the 1st of January 1792, as containing matters of business not connected with the points under investigation, which are from the 1st of January 1792 till the 21st of March 1793, to be sealed up ; and the same is now done, in presence of the parties and agents present, named in the preamble.

E
 Appeared JAMES HOPKIRK, merchant in Glasgow.—
 To whom it is objected, That he is a partner or stockholder in the Royal Bank, and therefore cannot be a habile witness, being interested in the issue of this action.—To which it
 F was answered, That the holding any part of the transferable stock of the Royal Bank, did not seem to be so direct and immediate an interest as to disqualify any witness, or to render the testimony in the smallest degree suspicious ; and therefore the objection, although proved, is submitted to be no wise relevant or admissible. But farther, the special matter to be proved
 G by Mr Hopkirk is stated in the condescendence, and he alone there mentioned as the witness by whom it was to be established, and the interlocutor of the Court, therefore, seems to preclude the present objection.—Replied for the defenders: In stating the
 H objection, the defenders by no means intend to throw the smallest reflection upon Mr Hopkirk, for whose character they entertain a high regard ; but as the objection appears to them to be a legal one, and has been sustained by the Judges of the Court of Session themselves, who are proprietors of Bank stock, as a reason for their declining to decide in the cause, the defenders apprehend
 the

the objection to be well founded, and a sufficient bar to Mr Hop- A
 kirk's being examined as a witness; and the objection is not ob-
 viated by the last part of the answers, because it was not stated to
 the Court when they pronounced the interlocutor, and therefore
 could not be under their consideration, and it was not within the
 certain knowledge of the defenders that he was a proprietor at the B
 time that they answered the pursuers' condescendence. And for
 proving the fact, that Mr Hopkirk is a proprietor of Bank stock,
 they refer it to Mr Hopkirk himself, who will be examined on
 that point *instantly*, if the commissioner shall sustain the objection.
 And Mr Hopkirk being solemnly sworn and examined, deposes, C
 That he is a proprietor of stock in the Royal Bank. And the a-
 bove is truth, as he shall answer to God.

The commissioner having considered the objection, answers, and
 replies, with the deposition of Mr Hopkirk, sustains the objection, D
 and refuses to admit him as a witness.

WILLIAM PENNIE, clerk or teller in the Royal Bank, aged
 25, unmarried, being solemnly sworn and examined, &c. de-
 poses, That he has acted as clerk or teller in the branch of the E
 Royal Bank at Glasgow for a number of years bypast: That he
 has had frequent occasions of attending to the exchange of notes be-
 tween the managers of the branch of the Bank, and the defender Mr
 Dunlop, as agent for the other defenders: and in general, he took
 down jottings of the extent of the exchanges at the times they happen- F
 ed; and particularly, that he took down jottings of the exchanges
 made upon the 26th day of February, 5th, 12th, and 19th of March
 1793, which he has now lying before him, and of which excerpts are
 made, and docketed, and subscribed as relative hereto, and which
 jottings the deponent has now submitted to the inspection of Mr G
 Gammill and his agents, who have in his presence perused the
 same: That the deponent observes the Bank held of Greenock
 bank-notes, upon the said 26th of February, to the amount of
 L. 2894, 16 s.; the defender Mr Dunlop, notes of the Royal Bank
 to the amount of L. 41, 8 s. and the balance of Greenock bank-H
 notes in the hands of the Royal Bank at this exchange, being
 L. 2853, 8 s. were delivered to Mr Dunlop, together with notes
 to the amount of L. 41, 8 s. in lieu of the Royal Bank notes to
 the amount of the last sum; and the said balance was carried to the
 debit of the account in question, in consequence of an order from
 Mr:

- A** Mr Dunlop: That upon the said 5th day of March the Royal Bank held notes of the Greenock Bank to the value of L. 3769, 18s. and Mr Dunlop notes of the Royal Bank to the amount of L. 160, 2s. and for the difference on the exchange of these sums, being L. 3609, 16s. Mr Dunlop gave an order to place the same to the debit of
- B** the said account: That on the said 12th day of March the Royal Bank held notes of the Greenock Bank to the amount of L. 1658, 4s. Mr Dunlop of the Royal Bank to the amount of L. 235, 11s. and for the difference, being L. 1422, 13s. Mr Dunlop also gave an order to place the same to the debit of the foresaid account:
- C** That upon the said 19th of March the Royal Bank held notes of the Greenock Bank to the amount of L. 2317, 9s. Mr Dunlop held notes of the Royal Bank for L. 132, 12s. and for the balance, being L. 2184, 17s. Mr Dunlop gave an order to carry the same to the debit of the said account. Depones, That besides the ex-
- D** changes upon the days particularly above deponed to, the deponent himself also exchanged, or assisted in the exchange with Mr Dunlop, the Bank-notes contained in the additional excerpt taken from his jottings, which is also docketed and subscribed as relative hereto, and which jottings he has at present lying before him,
- E** and has shown the same to the defender Mr Gammill, and his said agents: That the balances appearing from the said excerpt, as well as from the former excerpt, were delivered to Mr Dunlop in Greenock notes, and orders given at ascertaining the balances to debit the foresaid account with the amounts. And
- F** being interrogated, Whether he can explain how it appears, that on the 19th of February, one of the exchange days noticed in the excerpts produced, there appears odd money down to pence? depones, That he cannot particularly recollect the circumstance which gave rise to this appearance in the account; but
- G** he is apt to think, that as the Bank was sometimes in use to receive promissory notes of other banks, that this must have arisen from the interest chargeable upon a promissory Greenock Bank-note delivered to Mr Dunlop, and he observes from his jottings that a similar occurrence happened with the Paisley Bank upon
- H** the same day in the exchange with them: That in so far as the exchanges were not transacted by the deponent, as above deponed to, the other parts of the account libelled on were exchanged by Charles Gibson, clerk or teller in the Royal Bank. And being interrogated, for the defenders, Whether or not the jottings made by him in the blotters before mentioned relative to the exchanges of notes between

tween the Royal and Greenock Banks are dated in these blotters, A
 and whether or not the dates entered in these blotters of the said ex-
 changes were made at the time the jottings were set down in the
 blotters? depones, That the most of the dates now appearing in
 the blotters were not put down till this day, and these dates he
 marked down, in order to enable him with greater facility to turn B
 up the jottings when he came to be examined, and some of them
 yet bear no date: That he is satisfied that the dates prefixed to
 the jottings, so far as noted down, are the correct dates when
 the transactions took place, from his having compared Mr Dun-
 lop's account in the bank-books with his jottings, which he found C
 to agree. And the above is truth, as he shall answer to God.
 And it being moved on the part of the pursuers, that unless the de-
 fenders are satisfied of the excerpts made and exhibited by this wit-
 ness, being fairly and regularly taken from the jottings or blotters
 now under their inspection, that these jottings should, although D
 they contain a variety of transactions with third parties, be pro-
 duced, and make part of the report of the act and commission:
 The defenders answer, that although no objection occurs to them
 at present to the excerpts delivered by the witness, or that they
 may have reason to require exhibition of the blotters mentioned E
 in the deposition; yet they will avail themselves of the offer now
 made by the pursuers to exhibit the blotters themselves, if the de-
 fenders counsel at Edinburgh shall advise them to make that
 requisition; and the more so, as the defenders cannot admit
 the blotters to be evidence of the dates of the transactions men- F
 tioned in them, after what the witness himself has deponed with
 regard to the time and manner in which these dates were adhi-
 bited.

At Glasgow, the 7th day of February 1795. G

Appeared JAMES DUNLOP, one of the defenders, called as a
 haver, aged 40 years and upwards, married, who being solemnly
 sworn, &c. and required to exhibit all accounts, and writings,
 and letters, and copies of letters, relative to transactions between
 him and the other defenders, Mess. Dunlop, Houston, Gammill, H
 and Company, or any of the individual partners of that Compa-
 ny, from the 1st of January 1792, down to the 21st of March 1793:
 —To which it is objected, That the requisition made from the
 witness does not appear to fall within the pursuers condescendence,

C

or

A or within the limits of the interlocutor of the Court ; and the same objections which were made to the exhibition which was required by the pursuers from Mr John Dunlop, are precisely applicable to the requisition which is made from the present witness. In place, therefore, of repeating the whole objection and debate that took
B place upon the examination of Mr John Dunlop, the defenders beg leave here to repeat it ; but at the same time, as the defenders are extremely desirous to give every aid in their power to a regular and proper investigation, they now declare their willingness, that any exhibits which may be made by the witness shall be put
C under seal, and transmitted to Mr David Murray, for the purpose, and under the restrictions specified in the interlocutor of the Court of the 14th of January. — The pursuers repeat and refer to the answer made to the objection against Mr John Dunlop, the preceding witness ; and with regard to the proposition, That any exhibits
D that may be made by the present witness should be transmitted under seal for the inspection of Mr Murray, they will submit the propriety of this to the commissioner, when such exhibits shall be made.

The commissioner having considered the foregoing debate, before further answer, appoints the witness to exhibit as craved by
E the pursuers. And the said James Dunlop being examined upon the question stated for the pursuers, depones, That he does not recollect ever to have written a letter with his own hand to the Greenock Banking Company ; but the correspondence with the
F Bank was carried on by letters written by Mr Auld, the deponent's principal clerk, and, as the deponent thinks, signed by Mr Auld, upon his account, by which correspondence the deponent means the general correspondence with the Bank, with which Mr Auld was entirely entrusted : That the deponent had a private
G cash-account with the Greenock Bank ; and he remembers frequently to have wrote letters respecting his operations upon this account ; and the management and correspondence which was carried on by Mr Auld related to the business of the Bank-account exclusive of this private account. Depones, That when the depo-
H nent gave up or left his house in Glasgow, he left in his counting-house the whole correspondence with the Greenock Bank relative to the foresaid general account ; and these letters he did not consider as properly under his charge, having paid little or no attention to them, but under the charge and custody of Mr Auld : That
when

when the deponent's town-house was lately sold, he caused Mr Auld make out a list of his whole papers, and carry it to the trustee for his creditors, in order that he might select such of the papers as he thought might be of use, and to pack up the rest; and he does not now know where these papers are, unless they are in the hands of the trustee or Mr Auld, and that he has not fraudfully B put any of them away. Depones, That he was frequently in use to correspond by letters with Mr Gammill, and, in his absence, with the cashier of the Greenock Bank, respecting private matters; and he thinks, and is pretty certain, that he has in his possession these letters of correspondence, as well as the letters of correspon- C dence with the Bank relative to his private account; and he now engages, by Monday next, the 9th current, carefully to search for and to transmit to the commissioner the whole letters, accounts, and writings which he shall recover, and also, from his letter-book, to furnish a note of the dates of the whole letters written by him to D Mr Gammill the cashier, or the Bank, so far as the same may have been copied into that book, for the period inquired after, namely, from the 1st of January 1792, till the 21st of March 1793, to be reported as relative to this deposition. And this is truth, as he shall answer to God. E

After the foregoing deposition was closed, it was observed for the defenders, that as Mr Dunlop had gone so extensively into the exhibition which he has promised to make, and as it may appear, when the exhibition is actually made, that a general dis- F closure and examination of his correspondence may be highly injurious to third parties, and expose private and confidential communications, while such general exhibition is, at the same time, in the judgement of the defenders, far beyond the limits of the pursuers condescendence, and interlocutor of the Court; so they G reserve liberty, when the exhibition is made, to object to its being received, or admitted as part of the process, either altogether, or to consent to its being put under seal, and remitted to Mr Murray, as was done by the commissioner upon the exhibits made by Mr John Dunlop. H

And the foresaid WILLIAM PENNY being re-examined for the pursuers, depones, That since the appointment of Mr Alexander Warrand to be agent for the defenders at Glasgow, the deponent has made no exchanges of notes with him upon account of

A of the two Banks, but he knows, that exchanges were made between him and Mr Gibson, the other clerk, or teller in the Royal Bank office; but he believes Mr Gibson kept no jottings of these for some time after Mr Warrand's appointment, as the exchanges were so small, that it was not necessary: That Mr Warrand's appointment as agent took place after Mr Dunlop's failure; at least the deponent knows that he has acted in that character for the defenders in the exchange of notes. And the above is truth, as he shall answer to God.

C ALEXANDER WARRAND, merchant in Glasgow, aged 30 years and upwards, a witness cited for both parties, being solemnly sworn, &c. depones, upon the pursuers interrogatory, That he has no particular accurate jottings of the exchanges made by him with the branch of the Royal Bank at Glasgow, since he **D** has acted in the capacity of agent for the defenders in making these exchanges, which he has done since about the month of April 1793: That his general practice was, to enter the aggregate sums of the exchanges made with the whole Banks in Glasgow in his books in one sum: That he has been at pains to distinguish, as far as in his power, the exchanges made by him with the Royal Bank from the others; and he thinks, but is by no means certain, that in the course of the year 1794, the weekly average of exchange of notes amounted to about L. 900 Sterling with the Royal Bank, that is to say, of Greenock Bank notes, delivered by the Royal Bank to him: That so far as the deponent **F** can discover from his blotter-book or jottings, the average of the weekly exchanges of notes between the Royal Bank and him, as agent foresaid, from the commencement of his agency till the 1st of January 1794, appears to be about L. 467 Sterling; but, with **G** regard to this period, he does not pretend to be nearly so correct as for the year 1794. And the above is truth, as he shall answer to God.

CHARLES GIBSON, clerk in the Royal Bank-office Glasgow, aged 20 years and upwards, being solemnly sworn, &c. depones, That he has, with attention, examined the jottings or blotter-book kept by him, relative to the exchange of notes between the Royal Bank and Mr Dunlop, as agent for the Greenock Bank, from the 1st of January 1793 till the 21st of March 1794;

1794; and he now exhibits an excerpt, taken from these jottings A or blotter-book, of the dates specified in the said excerpts; and the same is now docketed and subscribed as relative hereto; and which transactions, stated in the excerpt, took place between Mr Dunlop and the deponent. Depones, That upon the 4th day of January, and 31st day of the same month, 1793, the deponent has B taken down in his jottings, only the balances of the Greenock notes delivered by him to Mr Dunlop, after deducting the Royal Bank-notes which he may have given the deponent upon the exchanges these days; but the said excerpt, in all other respects, shows the whole of the Greenock notes delivered to Mr Dunlop, C of the dates there specified, and not the balances, which do not appear to have been struck in his blotter-book on those occasions; and the reason of this was, that Mr Dunlop's clerk used to receive the whole of the Greenock Bank-notes in the possession of the Royal Bank, on these days of exchange, early in the fore- D noon, when the jottings thereof were taken, and sometimes the jottings were taken the night before; and in case any Greenock Bank-notes came into the hands of the Royal Bank, between the time of his taking the jottings the night before the exchange, and the time the notes were delivered out the following day to Mr E Dunlop's clerk, the deponent added these additional notes to his jottings in the blotter: That Mr Dunlop's clerk was in use to call back upon these exchange-days, about three o'clock afternoon, and to deliver to the deponent the notes which he held of the Royal Bank, and to give an order for the balance; and these or- F ders were delivered to Mr Penny, a former deponent, to be entered in the books of the Bank: That it consists with the deponent's knowledge, that Mr Dunlop sometimes gave a bill on Edinburgh for the amount of the Greenock Bank-notes received, and, when this happened, these receivings were not carried to the debit of G the account in question: That the deponent observes from his said jottings, that, upon the 16th day of March 1793, Mr Dunlop received of Greenock Bank-notes, from the Royal Bank, to the amount of L. 2422: That upon the 10th day of January, and year last mentioned, the deponent observes from his jottings, H a sum of L. 1692 taken off the total amount of notes in the deponent's possession at that time, which he supposes is a sum of Greenock Bank-notes; but he cannot be positive as to this point, as he has no characteristic mark annexed to the jotting to ascer-

Atain the matter precisely ; but he can think of no transaction else to which it can apply : That the day last mentioned was an exchange-day between the Banks ; and in case there were any Greenock Bank-notes in the Royal Bank upon that day, they would, according to the invariable practice that prevailed upon exchange-
Bdays, be delivered up to Mr Dunlop. Depones, and exhibits a list of the bills drawn upon Edinburgh by Mr Dunlop for the balances of the exchange between the Royal and Greenock Banks for the year 1792, which is accurately excerpted from the Royal Bank's Bill-book, and the same is docketed and subscribed, as relative
Chereto ; also exhibits an account of the exchanges, as marked in the deponent's blotter-book, which took place between the deponent, upon the part of the Royal Bank, and Mr Alexander Warrand, as agent for the Greenock Bank, from the 7th day of May 1793 to the 6th day of February 1795 inclusive ; but Mr War-
Drand may have got more notes from the deponent than therein stated ; and his reason for thinking so is, that, for several weeks in the months of May, June, and July 1793, and also in August, he does not observe in his jottings any exchanges upon one exchange-day of the week ; and the said list contains the whole
EGreenock notes, under the above explanation, which Mr Warrand received from the deponent during the period above stated : That the deponent can assign no other reason for not having the exchanges marked in his blotter-book during the exchange-days above mentioned, than that he thinks the sums would be small,
Fand that he would keep jottings of these upon slips of paper, as Mr Warrand received the notes ; and the said last exhibit is also docketed and subscribed, as relative hereto. Being interrogated for the defenders, Whether or not the explanations made in writing to the articles dated the 4th, 5th, and 31st of January, and 2d of
GFebruary 1793, in his first exhibited excerpt, appear upon or were taken from his blotters ; or, if not, from what source did he get that information ? depones, That he has that information from his blotters, and from no other source : That the dates adhibited to the jottings in the blotter-book, were all made at the times they
Htherein appear : That the par date of exchange, at which the Royal Bank have drawn upon Edinburgh for these twelve months past, is four days. Depones, upon being interrogated whether the business of the Royal Bank branch at Glasgow has decreased since the end of the year 1792 and beginning of the year 1793 ? That
he

he thinks that it has not, so far as fell under his particular department in the Bank, which is to receive payments of cash-accounts and deposit accounts, and money for bills and draughts on Edinburgh and London; this marginal addition being answered, upon a question from the pursuers. And being interrogated for the pursuers, Whether, so far as he has observed, the exchanges between the Royal Bank branch and the Glasgow Banks are materially different from what they were about the end of the year 1792? depones, That they are much about the same now as they were at and during the time mentioned in the question. And the above is truth, as he shall answer to God. C

Minute for the Defenders.

The defenders, conceiving the blotters which have been referred to by the preceding witness to be of importance to the cause, require that the witness do exhibit them. To which the pursuers having made no objection, the witness exhibits two blotter books, which are docketed and subscribed on the last page, as relative hereto; and the first pages are also subscribed by the witness and commissioner. E

At Glasgow, the 7th day of February 1795.

The commissioner now reports to the parties and agents who are now present, That Mr James Dunlop, who was formerly examined, has, in terms of his promise, contained in his foregoing deposition, transmitted to him a letter, with three sealed parcels, as the exhibits referred to in his deposition; and in respect it was formerly mentioned by the agents for the defenders, that they would oppose the examination of these exhibits by the pursuers or their agents, but would insist on their being transmitted sealed up to Mr David Murray, mentioned in the foregoing proceedings, for his inspection, along with the other exhibits; and the agents for the pursuers now insisting that they should have access to examine the contents of the said parcels, for this reason, that they have cited Mr Gammill as a haver, and until they see the productions made by Mr Dunlop, it cannot well be discovered whether they will have occasion to call from him any of the corresponding accounts, or communication relating to Mr Dunlop's exhibits; the

A the commissioner therefore, in these circumstances, before answer allows parties to state their objections and answers *binc inde*.

The defenders insist in their objections to the exhibitions mentioned in the foregoing minute, in any other manner than that they shall be transmitted to Mr David Murray, under the same restrictions that the exhibits made by Mr John Dunlop were agreed to be sent to him ; because it appears, from Mr James Dunlop's letter accompanying the exhibits now required by the pursuers to be made, that the correspondence mentioned in that letter, as part of those exhibits, must be of that private and confidential nature, which would render a public exhibition prejudicial to the interest of third persons. In order, however, to obviate the reason which the pursuers have given for demanding immediate inspection of the writings transmitted by Mr Dunlop, they have no objection to give the pursuers the lists of the dates of the letters written by Mr Dunlop to Mr Gammill and Mr Robert Caldwell, which letters are mentioned in Mr Dunlop's letter, and which, the defenders conceive, will fully enable the pursuers to examine Mr Gammill as a haver ; and, for that purpose, the defenders consent, that the parcels transmitted by Mr Dunlop shall be now opened, in order that these lists may be copied, after which they trust the commissioner will order them to be again sealed and transmitted to Mr Murray in manner aforesaid. The defenders do also now give notice, that they will oppose the exhibition of the letters mentioned in these lists, on any other footing than transmitting them to Mr Murray, if the pursuers shall insist on Mr Gammill's producing them.—The pursuers declare that they have no wish or desire to see any part of the exhibits in question, except what strictly relates to the transactions between the parties ; and in order that if any of these require explanation, such explanation may be had from Mr Dunlop, or the other witnesses that are yet to be examined ; and but for this, they would have no objection that the exhibits were transmitted to Mr Murray without any examination.—Replied for the defenders, That as Mr Dunlop is only called to depone as a haver, it would not be competent to put any question whatever to him in explanation of the exhibits made by him ; nor do the defenders apprehend that any such explanatory questions can be put to any witness who may be examined under this commission.

The

The commissioner having considered the foregoing debate, re- A
mits the parcels exhibited by Mr Dunlop, together with the letter
to him which accompanied them, to the Court, to be disposed of
as the Judges shall direct; and the said parcels being at present
under Mr Dunlop's seal, the commissioner has, in presence of the
persons attending the examination, also sealed them, to be in this B
manner transmitted without having been opened.

JAMES GAMMILL, one of the defenders, called as a ha-
ver, being solemnly sworn and interrogated, Whether he is pos-
sessed of a promissory note, or negotiable bill, issued by the de- C
fenders, and which would fall to have passed through the hands
of the cashiers for the Royal Bank at Glasgow into the hands of
Mr James Dunlop, on or about the 19th of February 1793; and
if he is, he is required to produce it? depones, That upon Fri-
day night last, in the course of the present proof, it having been D
intimated to the deponent by Mr Scott-Moncrieff, and the agents
attending upon the part of the pursuers, that he was to be ex-
amined as a haver relative to the promissory note called for in
the question; he therefore, in presence of the commissioner, and
the said agents, wrote a letter to Mr Caldwell cashier for the E
Greenock Bank, requesting him to search for the said note, and
if the same was found, to transmit it without loss of time to the
deponent: That in answer to said letter, Mr Caldwell trans-
mitted him the said promissory note, which he received last night,
and which he now exhibits, and the same is now docketed and F
subscribed, as relative hereto. And the above is truth, as he shall
answer to God.

At Glasgow, the 10th day of February 1795.

Appeared COLIN AULD, merchant in Glasgow, being solemnly G
sworn, &c. and being required to exhibit all accounts and writings
relative to the transactions between the defender James Dunlop,
and the other defenders Mess. Dunlop Houston, Gammill, and
Company, or any of the individual partners of that Company, from
the 1st of January 1792 down to the 21st of March 1793, the H
period of Mr Dunlop's failure:—Objected for the defenders, That
the requisition which has been made does not appear to them to
to fall within the bounds of the condescendence, or the interlo-
cutor of the Court; and therefore, without the pursuers shall

E condescend.

A condescend upon the particular writings that they wish for, the defenders feel themselves under the necessity of opposing such a general and indefinite exhibition, as has been required; but at the same time, as the defenders have no desire to oppose the investigation of the transactions in question, they have no objection that any exhibits which the witness may have to make, shall be produced to the commissioner, for the purpose of being transmitted under his seal to the Court, to be disposed of by the Judges as they shall be pleased to direct, in the manner that has been already done by the commissioner with the papers that were sent to him as exhibits by Mr James Dunlop.

The commissioner having considered the question and objections, appoints the witness to exhibit such writings and papers as the pursuers shall call for and consider as connected with the matters at issue, and the exhibits to be made to be remitted to the Court under the seal of the commissioner, to be disposed of as the Judges shall direct.

And the said Colin Auld, in answer to the foregoing question, depones, That he acted as clerk to the defender Mr Dunlop for about seven years previous to his failure: That some weeks ago, when Mr Dunlop's house in Glasgow was sold, the deponent was desired, by the trustees on his sequestrated estate, to remove Mr Dunlop's books and papers from the counting-house; and he accordingly sent such of Mr Dunlop's books as he was desired by the trustees, and found in the counting-house, to Mr Dunlop, one of the trustees; and a parcel of old books, together with a number of letters and papers, the deponent sent to the defender Mr Dunlop's house at Tollcross: That since he received a citation to appear as a witness in this cause, he went to Tollcross, and carefully examined the whole books, papers, and letters which he sent to Tollcross from the counting-house, so far as they related to the defender Mr Dunlop's affairs, from and since the 1st of January 1792 down to the period of his failure; and among these he found 325 letters from the defenders Dunlop, Houston, Gammill, and Company to the defender Mr Dunlop, which only appeared to him to relate in any way to the subject of this process; and that he found no books, or other papers or writings, which seemed to him to have any connection with the said process: That he has made up a list of the said letters, containing their respective dates, which, with the letters themselves, are now exhibited; and the

the said list is docketed and subscribed, and the letters are marked **A** on the back by the initials of the deponent as relative hereto : That the deponent, in character of Mr Dunlop's clerk, wrote and subscribed for him the whole correspondence to which the exhibits are answers, and they always were under the deponent's charge till Mr Dunlop's failure : That the defender Mr Dunlop did not **B** keep any general cash-book, but a balance-book was kept by the deponent for him, which was generally balanced every two days, which showed his receipts and payments, and the balances of his cash : That he did not know whether Mr Dunlop kept any private general cash-book ; but upon Thursday last, the 5th current, the **C** deponent saw in the Royal Bank office at Glasgow, two of Mr Dunlop's private books, one of which is titled on the back, ' Ledger 1790,' and the other, ' Cash-book 1790.' That Mr Dunlop did not keep any other books, to the deponent's knowledge, than those now shown him, and those delivered to Mr Dunlop the trustee. **D** Depones, That the deponent made all the exchanges of notes on account of the Greenock Bank for Mr Dunlop with the Royal Bank, from the 1st of January 1793, till Mr Dunlop's failure : That Tuesdays, Thursdays, and Saturdays were the exchange days ; and upon the Tuesdays and Saturdays he received the Greenock bank-notes, **E** before ten o'clock forenoon, and on the Thursdays at two o'clock, and gave what Royal Bank notes he had in exchange : That about three o'clock he always settled for the balances of the exchange, which were sometimes done by draughts upon Edinburgh at one day's date, and discounted three days interest, in order to make them **F** equal to bills payable at sight, at other times, by orders on the account in question ; and when he settled for these exchanges weekly with the other Banks, the Banks took draughts on Edinburgh for the amount of the balances, without deducting the three days interest or discount. And upon recollection, depones, **G** That it was Mr Dunlop's uniform practice, since January 1793, early on the forenoons of the exchange-days, and after the exchanges were made, to give an order on the account in question for the whole balances due on these days, which were carried to Mr Dunlop's debit on the said account, and when the deponent **H** went at three o'clock and settled, he sometimes made payments to account, partly in bank-notes, and partly in bills upon London or Edinburgh ; and such payments were carried to the credit of the account in question. And being interrogated, Whether he had any

A any communication with the defender Mr Gammill after the failure of Mr Dunlop regarding these exchanges, and the manner in which the Greenock Company were advised of them at Greenock? depones, That about a year and an half ago, as the deponent thinks, Mr Gammill met him upon the street, and inquired if Mr

B Dunlop was always in use to mention in the letters of correspondence the exact sums received from the different Banks in Glasgow upon the Tuesdays exchanges; to which he answered, he thinks that he could not recollect at that time, but would think of the matter, and acquaint him of it: That the deponent accordingly,

C ly, having recollected himself, wrote Mr Gammill a line that afternoon, informing him that the exchanges upon the Tuesdays were not always advised as they really occurred; but that notes sometimes came to hand upon the Monday, or remained from the Saturday's exchange, and these were included in the report of the

D Tuesday's exchange to the Greenock Bank, made upon the Tuesdays. And, further, depones, That no report of the Thursday's or Saturday's exchanges was made to the Greenock Bank by Mr Dunlop, but the Greenock Bank-notes were used by Mr Dunlop upon his own account, in purchasing, for his own behoof, Edinburgh and London bills, or otherwise; and upon Thursdays and Saturdays, no sum was brought to the debit or credit of the Greenock Bank for the exchanges of these days. And depones, That the bills so purchased were entered in Mr Dunlop's books, kept by the deponent, to their proper accounts. Being interrogated

F for the defender, If the letter now shown to him by Mr Gammill is the one referred to as being sent him upon the afternoon of the day when Mr Gammill met him on the street, as above deponed to? depones, That it is; and it is now docketed and subscribed, as relative hereto. And being interrogated, If he knows how long

G Mr Dunlop's Cash-book and Ledger, mentioned in the preceding part of his deposition, remained at the Royal Bank-office, when they were carried there, and in whose custody the deponent saw them there? depones, That upon Thursday last the 5th current, the deponent was sent for by Mr Scott-Moncrieff to the Royal

H Bank, and shown the said Ledger and Cash-book; and he understood that the purpose of sending for him was to explain something in Mr Dunlop's cash-account in that Ledger, as no other questions were put to him except about that circumstance, and also on purpose to inform him that he was to be examined the day following,

following, in place of the following Monday, which Mr Moncrieff A had formerly intimated to him that he was to be examined ; but at the time he was so sent for, he had not received a citation ; and he likewise understood, but can assign no reason for thinking so, that the said books had been brought to the Bank in the course of that day : That when he went to the Bank, he found Mr Scott- B Moncrieff, and his eldest son William, and Mess. George Russell writer in Edinburgh, agent attending this proof for the pursuers, and John More, accountant to the Royal Bank at Edinburgh, who has also attended the proofs in the Bank, examining the said books, at least Mr More was looking at them, and C asked the deponent some questions about them ; and the said Ledger and Cash-book are docketed and subscribed, as relative to this deposition.

GILBERT HAMILTON, merchant in Glasgow, called as a D haver, being solemnly sworn, and required to exhibit, in terms of, and answer the question proposed to Mr John Dunlop the first witness, depones, and exhibits two bound books, the one titled on the back, ' Ledger 1790,' and the other ' Cash-book 1790,' both of which are docketed and subscribed as relative hereto, E which are all the books which the deponent has in his possession belonging to Mr James Dunlop which have any relation to the matter at issue. He likewise exhibits an account between Sir William Forbes and Company, and the defender Mr Dunlop ; but which he does not think contains any thing with regard to F the said process ; nor has he any writings or papers any wise connected with the said matters, nor does he know or suspect where any such are, except those in the hands of Mr John Dunlop, trustee on the defender Mr Dunlop's sequestrated estate, nor has he fraudfully put any of them away : That the agents for G the pursuers having now pointed out the extracts which they want from the said Ledger and Cash-book, as the only parts of them which they consider necessary for them to be possessed of in this process, the deponent promises to excerpt these parts thereof, and if possible transmit them to the commissioner in the course H of this evening, and to make the books themselves forthcoming, if found necessary. Depones, That upon Thursday last, the fifth current, Mess. William Scott Moncrieff, accountant in the Royal Bank, called upon the deponent, along with Mr Robert Graham F writer

A writer in Glasgow, and requested the loan of the foresaid Ledger and Cash-book, as they said they had them to examine with regard to a process depending before the Court of Session: That the deponent accordingly lent them upon their receipt, and they are now returned to him; and the other book of accounts between **B** Sir William Forbes and Company and Mr Dunlop, which is also docketed and subscribed, as relative hereto, is left with the commissioner; and the foresaid excerpt will be also docketed and subscribed, as relative to this deposition. And the above is truth, as he shall answer to God. Upon the defenders interrogatory, **C** depones, That he is a proprietor of Stock in the Royal Bank.

The commissioner, upon the verbal motion of the defenders agent, appointed the account-book exhibited by Mr Hamilton, the former witness, to be remitted to the Court, to be disposed of as shall be directed by the Judges.

D *At Glasgow, the 11th day of February 1795.*

Mr JOHN DUNLOP, being re-examined, depones, and adheres to the exhibition made upon his former deposition, and now delivers to the commissioner the books, letters, and receipts therein **E** mentioned to be reported to the Court; and the said books are docketed and subscribed, and the letters and receipts marked with the initials of the deponent's name, as relative hereto. And the above is truth, as he shall answer to God.

D E-

DEFENDERS PROOF.

At Glasgow, the 7th day of February 1795.

APPEARED JAMES DUNLOP of Garnkirk, cited as a haver **A**
for the defenders, being solemnly sworn and examined,
and required to produce the scroll of a letter, dated the 1st Ja-
nuary 1793, or on some of the last days of the prior month of
December, addressed by him the witness to Mess. Scott-Moncrieff
and Dale, in which he offered to take the account in dispute; **B**
which scroll was prepared by Mr Scott-Moncrieff, and delivered
or sent by him to the witness to be copied and signed; depones,
and exhibits a scroll of a letter, which he received from Mr
Scott-Moncrieff, as he thinks, in his own house, some time be-
fore the 1st of January 1793, and, to the best of his recollection, **C**
upon the preceding evening, which contains the form of an or-
der upon the back of it, but bears no date; and the said scroll
is now docketed and subscribed as relative hereto; and the said
scroll has been ever since in the deponent's custody; and he the
deponent has no other scroll of a letter, nor received any from **D**
Mr Moncrieff except the one now exhibited. And being further
required to exhibit any other letters, notes, or writings, from Mr
Scott-Moncrieff, relative to the foresaid account, received by him
about the said 1st January 1793, depones, and exhibits a letter
from Mr Scott-Moncrieff, of date the 3d January, addressed to **E**
the deponent, in which was inclosed copy of a principal letter by
the deponent, addressed to Mess. Scott-Moncrieff and Dale, ca-
shiers to the Royal Bank, bearing date the 1st January 1793,

G

with

A with an agreement by the said Scott-Moncrieff and Dale, of date the 3d of January, and year last mentioned, addressed to the deponent, and subjoined to the said copy, both of which are also docketed and subscribed as relative hereto; and the deponent remembers, upon looking at the date of the said copy, that the **B** fore said scroll of a letter was delivered to him upon the night preceding, being the 31st December 1792; and he has no other letters or writings relative to the exhibition now demanded, than those that are mentioned in this deposition; and that he has not put any fraudfully away, nor does he know or suspect where any **C** such letters or writings may be. And this is truth, &c.

WILLIAM PENNY, clerk or teller in the Royal Bank, Glasgow, a witness examined for the pursuers; who being solemnly sworn, examined, and interrogated, Whether all the articles at **D** the credit-side of Mr Dunlop's account with the Royal Bank were paid in cash, and if not, in what manner were these payments made?—It was observed for the pursuers, That nothing regarding this appeared in the condescendence or answers, of which a proof has been allowed; but as it is not their intention to throw any **E** obstruction in the way of the defenders proving any thing that they think proper, so, if the commissioner thinks that the question is at all within the limits of the commission, they certainly will make no objection to its being put.—Answered for the defenders, That, without entering into a debate, whether the **F** question that has been proposed to the witness falls literally within the words of the interlocutor of the Court, it is certainly plain that the question is proper and admissible, agreeable to the spirit of that judgement, which goes to authorise an investigation and explanation of every part of the account in question; and therefore they submit to the commissioner, that the question ought to **G** be put, more especially as the last part of the pursuers observation seems to imply an acquiescence to that effect.

The commissioner having considered the foregoing requisition and debate, together with the condescendence, answers, and **H** interlocutor of the Court, finds it *ultra vires* of his power to allow the investigation required; and in respect the pursuers have not explicitly consented to the commissioner's putting the question, refuses to allow it.

And

And being interrogated, What is the par date at which **A** the Royal Bank branch at Glasgow presently draw upon Edinburgh, and have done for these twelve or fifteen months past? depones, That, to the best of his recollection, the branch of the Royal Bank in Glasgow, for twelve months bypast, have drawn upon Edinburgh at four days date, par of exchange. And being **B** farther interrogated, Whether the general business of the above branch of the Royal Bank has decreased since March 1793, and if he can explain the extent of it? depones, That no striking fact occurs to lead him to give an answer to the question from the period of March 1793; but he is certain that the general business of the Bank has decreased since the latter end of the year **C** 1792; that is to say, that the business of the Bank was, in his opinion, greater in the year 1792 than at any period since; but that the Bank business at present is not so much diminished as it was in some part of the intermediate period between the end of the year 1792 and this time; but, on the contrary, that it has been of late upon the increase. And being interrogated, Whether, upon occasion of the weekly exchanges which he made with Mr Dunlop, he recollects that the balances were at any time in Mr Dunlop's favour? depones, That in so far as he **E** was concerned in making the exchanges, all of which, so far as he remembers, are entered in the excerpts exhibited by him, were always in favour of the Royal Bank, as there stated. And being also interrogated, Whether the payments stated at the credit of Mr Dunlop's account with the Bank were made in part by **F** bills upon London; and if he can recollect, or discover by looking into the books of the Bank, the persons by whom these bills were drawn, and the names of the persons they were drawn upon? The pursuers repeat the observation relative to this question which they did to the first, and the defenders repeat their **G** answer to the said observation, and the commissioner adheres to the interlocutor formerly pronounced. And what the witness has above deposed to is truth, as he shall answer to God.

ALEXANDER WARRAND, merchant in Glasgow, a witness **H** who was examined for the pursuers, being solemnly sworn and examined, depones, That since his appointment as agent for the defenders at Glasgow, in the month of April 1793, he has been in use to receive payments of the bills and orders due to them in Glasgow:

- A** Glasgow: That he has also been in use to purchase bills on London on account of the defenders; and he this day took a note for the sum-total of these purchases from his books for the year 1794; and that they amounted to L. 30,759:2:4: That both before and since that period he has bought bills on London for
- B** them to a considerable amount. And being interrogated, If he has been in use to discount bills on account of the Greenock Bank, payable in Glasgow and Greenock, and if so, to what amount? depones, That he has discounted bills on account of the Greenock Bank, payable in Glasgow and Greenock, to a considerable amount;
- C** and he has often made these discounts at such times as he judged it for the interest of the Bank. Interrogated, If he has a discretionary power from the Greenock Bank to discount bills for them, such as are before described? depones, That he considered himself to have such a power, as he frequently took upon
- D** himself to do so: That he was in use to forward the bills to the Greenock Bank immediately after the London bills were purchased and the other bills discounted: That he paid for these bills partly in Greenock notes, when he considered they were to go in circulation, and by far the greatest part in notes of other banks, to prevent Green-
- E** ock notes being paid into other Banks. Depones, That he has frequently had letters from the Greenock Bank, desiring him to pay considerable sums of money on their account in Glasgow to their correspondents, which he accordingly did, for most part in notes of other Banks, for the reasons mentioned in his last answer:
- F** That the deponent has been in use to sell short-dated London bills, viz. from 10 to 25 days to run on account of the Greenock Bank, drawn by Robert Caldwell, their cashier on the Bank's correspondent in London, in all cases at 45 days par, excepting in two or three instances, when he sacrificed a day or two, as these
- G** bills were nearly due. And from an extract taken from his books this day, he observes, that in the course of the year 1794 he sold bills of the above description to the extent of L. 24,200. Depones, That he never had any power from the defenders to draw on any person whatever on their account, excepting on Sir William Forbes
- H** and Company, at one day's date, for the balances of the exchange made by the deponent at Glasgow: That the deponent, in the draughts drawn by him on Sir William Forbes and Company, always expressed in them to place the amount to the debit of the Greenock Bank: That the deponent keeps a regular account in his books with the Greenock Bank, and is debited in that account with

with the money of theirs that he receives; but in other respects A he makes no distinction in keeping it separate from his own, except in so far as regards the notes which he has been in use to receive in exchange, some of which he has at times retained himself, at other times paid away part of them on account of the Bank, and transmitted the remainder of these B retirements to the Bank at Greenock. Depones, That he never had any power to grant promissory notes, or borrow money on account of the Greenock Bank, even at a low interest; nor had he ever occasion to do so, as he had always plenty of their funds in his hands. And being interrogated for the pur- C suers, depones, That in virtue of the discretionary power, which he understood himself to possess from the Greenock Bank relative to the discounting of bills, as above deponed to, he has frequently purchased London bills without any particular instructions from them; and he adds, discounted bills for them, payable D both in Glasgow and Greenock, and remitted these bills to the Bank. And being interrogated, Whether it was part of his instructions from the Greenock Company, to transmit their notes to Greenock as he received them upon the exchange at Glas- E gow? depones, That he believes he had such instructions, although he does not recollect upon what occasion such instructions were given, or if any such were really given. Being interrogated, Whether he was not regularly in use to transmit the notes so taken up upon exchange, to Greenock, except when he had instructions or advice from the Company, or their cashier at Greenock, to dispose F of them otherwise? depones, That he has occasionally retained sums of money of the exchanged notes, to be paid away upon the deponent's own account, and paid sums with them on account of the Bank, without having instructions or advice from the Com- G pany, or their cashier at Greenock. And being interrogated, If there are regular entries in his books of the amount of the ex- H changes made on behalf of the defenders, and of the sums retained from the amount of these exchanges, as above deponed to; and, if so, that he would make an excerpt therefrom, and produce the same, so as to shew the sums transmitted to Greenock, and those H retained? the witness, in answer to the foregoing question, depones, and exhibits an excerpt taken from his book of jottings, of the exchanges made by him, as agent for the Greenock Bank, and the Branch of the Royal Bank, and other Banks at Glasgow in the aggregate, at the dates specified in the said excerpt; which

H

excerpt

A excerpt shews the sums retained by the deponent, marked ' Paid away,' and the balances are the sums of Greenock notes remitted by the deponent to the defenders at Greenock: That the deponent was not in use to make regular entries of his exchanges, as agent forefaid, on behalf of the Bank, or of the sums retained by him

B from these exchanges, but regular entries are made in his books of the amount of the notes transmitted to Greenock, after the exchanges were made; nor was he in use, for some time after the commencement of his agency, to preserve jottings of those exchanges; but he has taken such jottings, for this considerable

C time bypast; and from these the forefaid excerpt is made up, which, to the best of his knowledge, is a correct representation of the transactions therein stated: That he regularly transmitted to the Greenock Bank the whole other notes received upon exchanges, upon other occasions than those condescended on in the excerpt,

D never retaining more at one time than L. 10, and for the most part retaining no sum whatever. Depones, That the sums appearing to be retained by the said excerpt, were employed by the deponent, either for his own purposes, or for discounting bills, or otherwise distributing the Company's notes, as he judged for the

E interest of his constituents; but, to the best of his recollection, he never was instructed by them to retain and appropriate any of these sums for particular purposes: That he does not recollect whether he had or had not liberty to retain and apply the forefaid sums, or any part of them, for his own use; but he conceived he

F had a right to do it, as he held in his hands very considerable sums of the Greenock Bank, which, with those retained, he considered himself authorised to employ, when occasions occurred, for their benefit. Depones, That the deponent had no conversation with any of the partners, cashier, or any of the persons connected with

G the Greenock Bank, about the later dates of the year 1794, relative to the enlargements of the money appearing on the said excerpt, to be retained from the exchanges: That the deponent, for the most part, by slips sent with the notes exchanged, and not in his public letter, communicated the sums he retained to the Bank

H at Greenock, as sums ' paid away,' without specifying to what end they were applied. And being interrogated, If he ever purchased any bills on Edinburgh for account of the defenders? depones, That he has done it. Being interrogated, On what occasions?

sions? depones, He does not recollect; but so far as he remembers, that, during the whole of his agency, the amount would not exceed L. 2000 Sterling. And being interrogated, If he has any entries in his books, or jottings of any kind, to instruct on what occasions, and for what sums, these Edinburgh bills were purchased; and, if so, that he is required to give an excerpt accordingly? depones, That he thinks he has entries of some bills so purchased in his account-books; and he remembers to have purchased some bills in the same situation, the amount of which he cannot condescend upon, which he exchanged in other transactions; and as they did not affect the debit or credit of his constituents, he did not enter them in his books; and he promises, against to-morrow, to remit to the commissioner an excerpt of any bills which he has entered in his books of the above description. And being interrogated, Whether those bills he mentions to have purchased, and not entered in his books, were for considerable sums, or for small ones; by which is meant, whether it strikes the witness they were of the one denomination or the other? depones, That he does not recollect, nor whether they were above or below L. 20; neither can he say on whom they were drawn, as they were so very few of them, and so inconsiderable. And being interrogated, Whether the deponent acts as agent for the defenders upon a fixed salary? —Objected for the defenders, That the query proposed to the witness does not fall within the limits of the pursuers condescendence or the interlocutor of the Court; and although they are no way apprehensive of any thing unfavourable to the issue that might arise from its being answered, they deem it their duty to prevent the proof from being loaded with extraneous and irrelevant investigations, in which the pursuers have been already perhaps too much indulged, and they trust, therefore, that the commissioner will consider the question to be improper. —Answered for the pursuers, That if there has been any extraneous and irrelevant investigation, they cannot help thinking, that at least the imputation of it will not fall upon them; the question now put they conceive to be a very pertinent one, and to arise out of the witness's evidence when examined on the part of the pursuers, as well as being otherwise evidently material to the issue, and they therefore submit to the commissioner, whether or not it ought to be put.

The

A The commissioner having considered the foregoing objection and answers, sustains the objection, and refuses to put the question.

February 10. 1795.

Appeared the before designed Alexander Warrand, who being
B examined, depones, and exhibits an account of all the bills on Edinburgh that appear from the deponent's books to have been purchased by him for the defenders since his agency commenced, as mentioned in his former deposition, and the excerpt thereof is now docketed and subscribed, as relative hereto. And being inter-
C rogated, How he disposed of the bills mentioned in the list now exhibited?—Objected for the defenders, That the question proposed is beyond the limits of the pursuers condescendence, and therefore they must oppose its being put, although, if the pursuers were to consider what has been already deponed to by this
D witness, they may see it has been already fully answered.

The commissioner sustains the objection, and refuses to allow the question to be put.

And the witness depones, That what he has above deponed to is truth, as he shall answer to God.

E **ROBERT SCOTT-MONCRIEFF**, one of the pursuers, called as a haver; being solemnly sworn and examined, and being required to say, If he received from Mr William Simpson, or any other officer of the Royal Bank at Edinburgh, or from the Court of Directors, any letter or unsigned note, dated the 18th, 19th, or 20th days of March 1793, or any letter received by him on the 21st of the said month of March, addressed to himself, or to Mess. Scott-Moncrieff and Dale, mentioning, or having any relation to the Greenock Bank, Mr James Dunlop, or the account in question? de-
F pones, That he did not, upon any of the dates mentioned in the question, receive any letters from any of the Court of Directors of the Royal Bank at Edinburgh, or any other officer of the Bank, Mr William Simpson cashier excepted: That he thinks that it is highly probable that the branch of the Bank at Glasgow, under
G the firm of Scott-Moncrieff and Dale, received a letter from Mr Simpson upon each of these dates, as he was in the practice of writing them almost daily: That it is also highly probable that the deponent, on all or some of these dates, received private confidential notes (inclosed in the public letters) from Mr Simpson, which were not signed; and his reason for thinking so is, that Mr
H Simpson

Simpson was very generally in the practice of inclosing him such A notes in the public letters : That it was the deponent's general practice to destroy these confidential notes immediately, or short while after they were received ; and if any such came to his hand at the times above mentioned, he destroyed them, according to his usual practice ; and he thinks it is probable that the subject of the present process may have been mentioned, but he has no positive recollection, either of the contents of these notes, nor of the fact of having received them. And being interrogated, Whether, upon either of the before-mentioned days, viz. the 18th, 19th, or 20th of March, he received any letter or unsigned note, from the Court of Directors, or from Mr Simpson, desiring Mr Dunlop's account to be immediately withdrawn ? and whether, in consequence thereof, he wrote an official letter to Mr Dunlop, and also one from himself to that purpose ? depones, That about the beginning of March last, Mr Simpson and some of the Directors, when here, left verbal orders to shut Mr Dunlop's account, and call up the money owing the Royal Bank on the said account ; and whether any directions to the same effect were given by Mr Simpson to the deponent in his private notes, he cannot recollect ; and he thinks it is probable that Mr Simpson, in some of his private notes, might remind him of what passed relative to calling up the account when the Directors were in Glasgow ; but his recollection rests not upon fact, but on probability, and he remembers to have wrote Mr Dunlop a letter in terms of Mr Simpson, and the said Directors instructions ; but the date of it he cannot condescend upon, although he is inclined to think that it bore date the 20th of March. And being interrogated, Whether the letters or unsigned notes, which he received from Mr Simpson above mentioned, and which he says were cancelled, or burned, or destroyed, were so done prior to the failure of Mr Dunlop on the 21st of March 1793 ? depones, That it was the deponent's invariable practice to destroy the said confidential notes ; and generally upon the evening of the day on which they were received, or after he had answered Mr Simpson's letter ; and he did not, to his recollection, destroy any of these notes after he heard of Mr Dunlop's failure : That in case he received one of these notes upon the 21st of March, the day upon which he heard of Mr Dunlop's failure, but of receiving such note on that day he

A has no remembrance, he may not have destroyed it till after he heard of his failure. Depones, That he furnished Mr Dunlop with the scroll of a letter of his own hand-writing, as he thinks, upon the 31st day of December 1792, in consequence of a previous conversation, which the deponent and Mr Dunlop had together respecting the account in question. And the scroll of a letter, with a form of an order upon the Bank upon the back of it, which are of his, the deponent's, hand-writing, being now shown him, he depones, That it is the scroll of the letter given by him to Mr Dunlop as aforesaid, and meant to be the basis upon which the said account was to be granted; and the same is now docketed and subscribed, as relative hereto. And being required to exhibit a list or inventory of all bills on London or Edinburgh, paid into the Royal Bank branch at Glasgow by Mr Dunlop, from the 1st January 1793 to the 21st March following, and the like list or inventory of all bills on London or Edinburgh, drawn by the Greenock Banking Company, or Mr Caldwell their cashier, paid into the said Royal Bank branch by Mr Dunlop, depones and exhibits a list and inventory of bills drawn by Mr Dunlop on Edinburgh and London, in favour of the Royal Bank at Glasgow, during the period stated in the question, all of which were drawn by Mr Dunlop; and he could not find, from the Bank books, any one bill on London or Edinburgh, for the foresaid period, drawn by the Greenock Bank, or the said Robert Caldwell their cashier; and the said list is also docketed and subscribed, as relative hereto: That the deponent does not know or suspect where any of the letters or writings, called for in this deposition, are, or know any thing of them, except in so far as they were destroyed, as above deponed to; nor has he any of them in his own possession; and he did not fraudfully destroy or put any of them away. And the above is truth, &c.

DAVID DALE, one of the pursuers, called as a haver, being solemnly sworn and examined, and required to say, If he received from Mr Simpson, or any other officer of the Royal Bank at Edinburgh, or from the Court of Directors, any letter or unsigned note, dated the 18th, 19th, or 20th of March 1793, or received, on the 21st day of the said month, addressed to himself, or to Mr Scott-Moncrieff, or to Mess. Scott-Moncrieff and Dale, mentioning,

mentioning, or having any relation to the Greenock Bank, Mr A James Dunlop, or the account in question? depones, That he never received any such letters or unsigned notes, as mentioned in the question. Being interrogated, If he ever saw any such letters or unsigned notes in the office of the Bank, and what is now become of them? depones, That the answers given by him upon B his former deposition, which he has now perused in printed exhibits in process, together with the answer to the former question, includes his answer to these questions; namely, That he has frequently seen private notes from Mr Simpson to Mr Moncrieff, the former deponent, relative to Mr Dunlop; but he does C not know, or suspect, where they are, excepting they be in Mr Moncrieff's own hands; but he has heard Mr Moncrieff say they were burned, and he believes it to be fact. And further, That these references, with regard to Mr Dunlop, respected him as agent for the Greenock Bank, and respecting the account which D he held as agent for the Greenock Bank; and he does not know of Mr Dunlop's having had any transactions with the Royal Bank, except as agent for the Greenock Bank; and, from the time he became a partner thereof, or soon after, to the best of his recollection and knowledge, he has had no account with them E in any other character: That the deponent has not seen any of these confidential notes by Mr Simpson to Mr Scott-Moncrieff since Mr Dunlop's failure, received previous to that period; but he believes they were burned by Mr Moncrieff in manner above deposed to: That the deponent also believes, in consequence of F Mr Moncrieff's information, that Mr Moncrieff was in use to burn these confidential notes upon the day they were received, or soon after; and the deponent has himself seen Mr Moncrieff not only burn these notes, which regarded Mr Dunlop as agent for the Greenock Bank, but has also seen him burn other confidential notes respecting other persons: but these notes, he is confident, G were not destroyed with any intention to injure Mr Dunlop, or the Greenock Bank, for the deponent has seen Mr Moncrieff in the practice of burning these notes long before Mr Dunlop's failure. And the above is truth, as he shall answer to God. H

10th February 1795.

COLIN AULD, merchant in Glasgow, depones, That the forty-three receipts exhibited by Mr John Dunlop, the first witness in the

- A** the pursuers proof, were granted for payments made by Mr James Dunlop to the credit of the account in question; and they are now marked with the initials of the deponent's name. And being shown two of these receipts, one dated the 17th of January, another the 27th of February, 1793, bearing, That the sums therein specified were received from ' Mr James Dunlop, as agent ' for the Greenock Banking Company,' in the first of these receipts, and as ' agent for the Greenock Bank,' in the second of them; and being interrogate, If he knows why Mr Dunlop was designed in that manner in these two receipts, which
- C** he is not in the other forty-one? depones, That he can assign no reason, except that they are written by a different hand from the others; and the deponent does not know the hand-writing: That he thinks he could condescend on the names of the writers of all the other receipts except these, and the one bearing date
- D** the 11th March 1793. And being interrogated, If he ever had any conversation with Mr James Dunlop relative to the said receipts of the 17th of January and 27th of February, and if so, to repeat the substance of it, and at what period?—It was observed for the pursuers, That if the conversation alluded to was meant
- E** as having taken place after the failure of Mr Dunlop, the evidence would be inadmissible; and, at any rate, there appears nothing under the present commission to authorise the question. — Answered, The defenders will restrict the period mentioned in the interrogatory to the time previous to Mr Dunlop's failure;
- F** and as Mr Auld is deponing both as a witness and as a haver, the defenders contend, that the question is perfectly relevant and competent. — Having considered the question, observations for the pursuers, and answers, refuses to allow the question to be put, in respect Mr Dunlop himself would be an inhabile witness to establish any fact to the prejudice of the pursuers; and, of course, any information derived from him is considered by the commissioner as incompetent.

Against which interlocutor the defenders appeal to the Court of Session, and reserve right to be heard thereupon.

- H** And the witness being interrogated, Whether he ever had any conversation with Mr Scott-Moncrieff or Mr Dale, or with any of the clerks, accountants, or tellers of the Royal Bank, relative to the two receipts before mentioned? or whether he ever carried, or was desired to carry to the persons before mentioned, any mes-

sage or messages from Mr Dunlop, relative to the said receipts **A**
 previous to his failure? depones, That of the date of one or other
 of the two receipts above mentioned, Mr Dunlop happened to
 see the said receipt upon the desk in the counting-house, and
 inquired at the deponent, if the Royal Bank always drew the
 receipts in the same manner with that one? To which he an- **B**
 swered, They did not; and he ordered the deponent to carry
 them a message, desiring them not to do so again; and which
 message the deponent meant to have delivered to one or other of the
 tellers of the Bank next forenoon; but he was countermanded by
 Mr Dunlop that same evening, saying, that as they had only done **C**
 it once, it was not worth while to take any notice of it. De-
 ponos, That neither Mr Dale nor Mr Moncrieff, nor any of the
 clerks nor accountants about the Royal Bank, had any conversation
 with the deponent about the said receipts. Deponos, That he
 knows that neither of the said two receipts are of the hand-writ- **D**
 ing of Mr Dunlop the defender, or of the deponent himself, nor
 any of the other receipts exhibited. And being interrogated, If
 any London or Edinburgh bills were remitted to the Greenock
 Bank by Mr Dunlop, but those that are stated in the book exhibi-
 ted by Mr John Dunlop, and now shown to the witness and dock- **E**
 eted as relative hereto, from January 1792 till March 1793, in his
 account-current in said Bank? depones *negative* to the question,
 And being interrogated, If he paid money to the Royal Bank up-
 on the days of the weeks in which no exchanges were made, to be
 placed to Mr Dunlop's account, or the account in question? depones **F**
affirmative to the question; and that he made such payments fre-
 quently, and these always were in notes other than those of the
 Greenock Bank. And being interrogated, If the notes sent by the
 Greenock Bank to Mr Dunlop, and which stand at their credit in
 the account-current kept with the said Bank by the witness, in **G**
 the book above referred to, were all in notes of other Banks, or
 if any Greenock notes were included in the said remittances?
 depones, That the remittances were wholly in notes of other
 Banks. Being farther interrogated, If any discount was taken off
 the bills upon Edinburgh at one day's date, which was given by **H**
 Mr Dunlop to the Royal Bank for the amount of the exchanges,
 before he opened the account in question? depones, That there
 was not, so far as the deponent recollects. Being interrogated,
 Whether Mr Dunlop had any other transactions with the Royal
 Bank **K**

A Bank personal to himself, except under the account in question, since January 1792? depones, That the deponent has different times purchased small bills upon London and Edinburgh, by which he means bills of L. 15 or L. 20, for Mr Dunlop, from the Royal Bank branch, during the above period, and has taken
 B these bills payable to himself the deponent, or the persons they were to be remitted to; and he does not remember of any of these bills having been taken payable to Mr Dunlop himself; and the reason for Mr Dunlop's name not appearing in these transactions, was to prevent the Bank from suspecting that Mr Dunlop was purchasing such small bills from them; and whatever of these transactions took place, were regularly entered in the account-books kept by the deponent. And further depones, That he has frequently, during the period foresaid, sent strangers to the Royal Bank to purchase bills for considerable sums on Mr Dunlop's
 C private account; and these bills were, in general cases, taken payable to the persons who carried the money, and sometimes in the names of the persons to whom they were to be remitted, and never in Mr Dunlop's own name, in order to keep from the view of the Bank, that Mr Dunlop had any concern with them; and
 D these bills were all regularly entered in Mr Dunlop's account-book kept by the deponent. And the above is truth, as he shall answer to God.

At Edinburgh, the 19th day of February 1795 years.

F SAMUEL ANDERSON, Esq; banker in Edinburgh, and one of the partners of Sir William Forbes, James Hunter, and Company, bankers in Edinburgh, being solemnly sworn and examined by the Commissioner, and being desired to exhibit and produce a state of the exchanges of Greenock Bank notes made by Sir William Forbes and Company, on account of the defenders, with the Royal Bank at Edinburgh, from the 22d of February 1792 to the 22d of March 1793; and also to produce a state of the account of the defenders with Sir William Forbes and Company, from the 1st of January to the 31st of December 1792, and from
 G the 1st of January to the 30th of June 1793, depones, and produces a state of the notes retired from the Royal Bank, for account of Mess. Dunlop, Houston, and Company, by Sir William Forbes, James Hunter, and Company, beginning with the exchange of the 24th of February 1792, and ending with the exchange of
 H the

the 22d of March 1793, as appears by their books ; and said state A
 is marked as relative hereto by the deponent, commissioner, and
 clerk, of this date ; as also exhibits and produces an abstract of the
 account-current between Mess. Dunlop, Houston, Gammill, and
 Company, and Sir William Forbes, James Hunter, and Company,
 beginning with the 1st of January 1792, and ending the 31st of B
 December same year ; which account shows the balances at the end
 of each quarter of said year, and is marked as relative hereto, of
 this date ; as also produces and exhibits an abstract of the ac-
 count between the said parties, beginning with the 1st of Janu-
 ary 1793, and ending the 29th of June of the same year, which C
 is also marked as relative hereto, of this date. And being exami-
 ned as a witness, and interrogate, If he knew or suspected, that
 any alteration had taken place in the mode of settling the ex-
 change made by Mr James Dunlop, of the Greenock Bank notes
 with the Royal Bank branch at Glasgow, about the 1st of January D
 1793, or from that time to the date of his failure ? depones, That
 he had no reason to think there was any alteration in the mode of
 conducting their exchange at Glasgow. Interrogated, Did Sir Wil-
 liam Forbes and Company act as agents for the Greenock Bank, in
 exchanging their notes, accepting and paying their bills drawn by E
 their cashier on them, for an annual fixed salary, for some con-
 siderable time before January 1793, until after March 1793 ? de-
 pones, That they did act as agents for the defenders for some con-
 siderable time before January 1793, and continued to do so, until
 after March 1793, at a fixed salary, as appears from the two ac- F
 counts-current produced. Being interrogated for the pursuers, If
 he can produce a continuation of the account of exchanges from
 the 22d of March 1793 to the 21st of September 1793, and of the
 exchanges on the part of the Greenock Bank with the Bank of
 Scotland, from the 24th of September 1792 to the 21st of Sep- G
 tember 1793 ?—To which it is *objected* for the defenders, That as
 the Company of Dunlop, Houston, Gammill, and Company, was
 dissolved in July 1793, and a new Company established, the pur-
 suers can have no right to call for production of any papers rela-
 ting to the new company ; neither can they have any right to call H
 for production of any accounts relative to the transactions of the
 defenders with the Bank of Scotland, which are not even alluded
 to, either in the condescendence or answers. But although the
 defenders have stated this objection, to show that the pursuers are
 making

A making demands which they have no title to make, the defenders being desirous that they should receive every information, consent that the accounts demanded be produced by the witnesses.

The commissioner, in respect of the above consent, allows the question to be put. And the question being put to the witnesses, B he depones, That he has not made out the states called for, but he will get them done, and transmit them to the commissioner, signed by the deponent, as relative hereto. And being further interrogated, Whether the house of Sir William Forbes and Company were agents for the exchange of notes at Edinburgh for the house of C Carrick, Brown, and Company, bankers in Glasgow; and if so, whether the last-mentioned house was in use, from the 24th of September 1792 to the 21st of March 1793, of transmitting large sums in Greenock notes to Sir William Forbes and Company, to be exchanged at Edinburgh?—To which it is *objected* by the de- D fenders, *first*, That this is not a cross interrogatory, but a question in chief, and therefore cannot be at present put; *second*, That the pursuers cannot enter into any proof which regards Carrick, Brown, and Company, with whom the defenders are not connected; and, *thirdly*, That there is not one word either in the con- E dence or answers, to which the proof is limited, which can authorise the question now attempted to be put.—*Answered* for the pursuers, That the question is merely meant to be explanatory of what the defenders have been endeavouring to establish, and which is expressly stated in their answers to the conde- F scence, *viz.* That the exchanges of the Greenock notes at Edinburgh, in place of being lower, or of a smaller amount, during the transactions in dispute, were much the same, or rather higher than before; for the pursuers expect from the answer to the question proposed, that this will be fully explained and ac- G counted for, in so far as the Glasgow Banks, in place of retaining the defenders notes, and making an exchange thereof with Mr Dunlop at Glasgow, were in use to transmit them to their correspondents at Edinburgh, to be there exchanged with Sir William Forbes and Company, the defenders agents.—*Replied*, The de- H fenders have no objection to every investigation being made with regard to their exchanges, and they have no objection to the pursuers calling for production of a state of the exchanges made by Sir William Forbes and Company on their account with every person with whom any exchanges were made; but the question
now

now proposed is of a totally different nature, referring to a particular transaction of Carrick, Brown, and Company, which the limited nature of the proof allowed, cannot admit of being put. If the fact wanted to be proved can be proved by the books of Sir William Forbes and Company, the defenders have no objection to an extract from the books being produced; but the article B in the answers to the pursuers condescendence upon which the pursuers found, refers entirely to 'evidence from the books of the Royal Bank, and those of Sir William Forbes and Company;' and under that article the pursuers cannot prove by other evidence any circumstance whatever. C

The commissioner having considered the question, objections, answers, and replies; in respect the matter allowed to proof is confined to what can be instructed by the books of the Royal Bank, and those of Sir William Forbes, James Hunter, and Company, restricts the interrogatory to this extent, that the witness D be interrogated, Whether the above facts can be proved by the books of Sir William Forbes, James Hunter, and Company?

And the question being put to the witness as so restricted, deponees, That he cannot positively answer the question; but rather E thinks, that the fact cannot appear from the books of Sir William Forbes and Company; but he will examine the books, and will give notice to the commissioner, if he discovers any thing to that purpose in the books. Interrogated for the defenders, Whether, upon exchanging the notes of the Greenock Bank, the whole notes F were always sent to Greenock, or whether considerable quantities of these notes were at different times delivered by Sir William Forbes and Company, to be transmitted to the agents of the Greenock Bank at Hawick and Brechin?

In respect the agent for the defenders has not been able to shew, G that the above question is not comprehended in either the condescendence or answers, the commissioner refuses to allow the question to be put. All this is truth, &c.

WILLIAM SIMPSON, Esq; cashier of the Royal Bank of H Scotland, being solemnly sworn, and examined by the commissioner; and being desired to exhibit and produce a state of the exchanges made by the Royal Bank with Sir William Forbes and Company, as agents for the Greenock Banking Company, of the

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notes

A notes of the Greenock Banking Company, from the 1st of January to the 31st of December 1794, and of the exchanges of the notes of the defenders, from the 1st of January 1792 to the 22d of March 1793, depones, and exhibits a state of these exchanges, made out from a memorandum-book kept by one of the clerks

B of the Royal Bank: But depones, That the data upon which this memorandum-book was kept, were gathered by the clerk from the different tellers in the Bank; and, as it was kept as a matter of curiosity, and not as a voucher of any cash-transactions, he cannot be certain as to its accuracy, and on that account he thinks

C the fact can be better instructed by the books of Sir William Forbes and Company, where the exchanges would make a regular cash-transaction; and the said state is marked as relative hereto, of this date. And being further required to produce any letters, unsigned notes, or copies of letters or notes, wrote by him, or any

D of the other officers, or the Court of Directors of the Royal Bank at Edinburgh, to Mr Scott-Moncrieff, dated the 18th, 19th, or 20th days of March 1793, and received by Mr Scott-Moncrieff on any of these days, or on the 21st of March, mentioning, or having any relation to the Greenock Bank, Mr Dunlop, or the

E account pursued for? The witness observed, That the question now put seemed to him to be precisely the same, or at least completely comprehended under those put to him when he was formerly examined in the cause, to which he had given full answers. *Answered* for the defenders, That without regard to the former de-

F position, the defenders are intitled to have an answer to the requisition now made, as the answers for the defenders to the pursuers condescendence expressly mention what is now required, as one of the subjects upon which they demanded a proof, and a proof is in general allowed of all facts contained in the condescendence and

G answers; and the reason of the question being now put, appears from the answers, which Mr Simpson is requested to peruse before answering the question. And the question being put, depones, and refers to his former deposition, and that he has found no further papers of these dates since his former deposition. This is truth, &c.